IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 2449 of 1985

For Approval and Signature:

HON'BLE MR.JUSTICE P.B.MAJMUDAR

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1. Whether Reporters of Local Papers may be allowed to see the judgment? : YES

2. To be referred to the Reporter or not? : YES

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the concerned Magistrate/Magistrates,Judge/Judges,Tribunal/Tribunals? : NO

H C MANIAR

Versus

STATE BANK OF SAURASHTRA

Appearance:

MR BK DAMANI for the Petitioner.

MR BM MANGUKIYA for the Petitioner.

MR JD AJMERA for the Respondent.

CORAM : HON'BLE MR.JUSTICE P.B.MAJMUDAR

Date of decision: 12/11/2003

ORAL JUDGEMENT

1. By filing this petition under Article 226 of the Constitution of India, the petitioner has challenged the order of compulsory retirement dated 28th March, 1985,

which is passed by way of punishment.

2. The petitioner has joined the respondent-bank as a Clerk in the year 1963 and, subsequently, he was promoted in October, 1978 as Officer Grade I. The petitioner was subjected to charge sheet dated 24.2.1980, at the time when he was serving as Assistant Accountant at the Jamnagar Branch of the Bank. As per the charge sheet, the petitioner was subjected to the following five charges :-

" ... ...

(i) That with a view to cause personal gains to yourself and wrongful loss to the bank, you had encashed withdrawals of Rs.1,000/- on 5.2.79, Rs.750/- on 17.2.79 and Rs.1,000/- on 5.6.79, drawn on your joint savings bank account No.4542 maintained with Bank's Bhavnagar (Krishnanagar) Branch even though no sufficient balance was lying in the said account to cover the amount of aforesaid withdrawals and thus utilised the bank's funds for your personal use for pretty long period.

(ii) That you had with an ulterior motive not forwarded two withdrawals, i.e. of Rs.1,000/- and Rs.750/- discounted by the Branch on 5.2.79 and 17.2.79 respectively from you and either misplaced or destroyed said instruments along with branch's forwarding letter.

(iii) That in order to create an impression that relevant documents in respect of your withdrawal for Rs.1,000/- encashed by you on 5.2.79, were not forwarded by you willingly; you had also misplaced or destroyed the I.C.C. No.22 along with its documents in respect of bank's other party discounted by the branch on the same day;

(iv) That you had with an ulterior motive misplaced or destroyed the registered post cover containing returning memo of your withdrawal of Rs.1,000/discounted by the Branch on 5.6.1979, along with related papers received back from our Bhavnagar (Krishnanagar) branch by our Jamnagar (R.R.) Branch on 22.6.1979.

(v) That you had with an ulterior motive misplaced or destroyed the list of the registered post for 22.6.79 received from the postal authorities.

... ..."

As per the charge sheet, at Annexure 'A', which is at page 14 of the compilation, the petitioner had abused his position as an Officer handling bills / despatch etc. departments of the Branch during his tenure as Assistant Accountant and, thereby failed to discharge duty with utmost integrity, honesty, devotion and diligence and acted in a manner which is unbecoming of an Officer of the Bank. It is also alleged that the petitioner has discounted / negotiated cheques / withdrawals drawn on his account without sufficient balance therein, by which he has contravened the provisions of Rule 50(4) and 60(2) of the bank's Regulations, i.e. State Bank of Saurashtra (Officers') Service Regulations, 1979. The petitioner was called upon to submit his explanation in that behalf. Statements of allegations were also submitted along with the charge sheet, with necessary documents and list of witnesses.

3. The petitioner, thereafter, gave his explanation. In his initial reply dated 6th October, 1979, which is at page 22, at Annexure 'C' in the compilation, the petitioner has stated that it is not correct to say that he was in charge of bills, despatch and other sections and that he used to work on the table under direct control and supervision of the Branch Manager and Sub Manager. It is, therefore, stated by him that he cannot be held responsible for the lapses occurred in bills and despatch section. So far as the charge regarding three withdrawals is concerned, his explanation was that he was maintaining a joint savings bank account at Krishnanagar Branch of the Bank at Bhavnagar, with his three brothers, bearing account No.4542, and that he was assured by his brothers that they will keep sufficient balance in the account and that due to some unforeseen circumstances, his brothers could not manage to deposit the required fund in time and at the time of encashment, the petitioner was under the impression that sufficient funds are available to cover the aforesaid three withdrawals and, therefore, the said three withdrawals were made in good faith and without any bad motive. As stated above, the aforesaid explanation is produced at page 22.

The petitioner also gave further explanation, by his letter dated December 20, 1979. In the further explanation, the petitioner gave instance of a similar omission, which had occurred in the case of another employee, wherein the said employee was treated liberally

in the matter of imposing punishment. Regarding misplacement / non-reaching of the instruments to the drawee office, the petitioner has pointed out, in his additional explanation, that the Branch does not maintain Vouchers / Instruments Movement Register and in absence of such evidence, the Bank cannot hold him responsible for the alleged misplacement of the said documents. The petitioner accordingly, by his aforesaid replies, denied the charges levelled against him.

The Bank, thereafter, appointed an Enquiry Officer and regular enquiry was conducted in connection with the aforesaid charges.

4. As stated earlier, so far as the three withdrawals are concerned, the petitioner had admitted the said aspect that he had withdrawn the aforesaid amount by submitting three withdrawal forms from time to time and he had encashed the amount. The explanation of the petitioner was that he was under the impression that sufficient funds are available to cover the aforesaid three withdrawals.

5. The Presenting Officer of the Bank submitted his report before the Enquiry Officer, which is at page 26 in the compilation, wherein the Presenting Officer has dealt with each of the charges levelled against the petitioner and has tried to justify each of the charges. Particulars of the list of documents exhibited during the enquiry is given at page 39 in the compilation.

6. On behalf of the delinquent, defence statement was produced before the Enquiry Officer by the defence representative, which is at page 41 in the compilation, and reference was made in the said defence statement to the earlier reply dated 6th October, 1979 given by the delinquent.

In the defence statement, so far as charge No.1 is concerned, the reply of the delinquent dated 6th October, 1979 is incorporated. So far as charge No.2 is concerned, it is stated in the Defence Statement that there was no record in the Branch indicating movement of postal instruments from one Department to another. The said charge was accordingly denied.

Regarding charge No.3, it is stated in the defence statement as under :-

" ... ...

While it is true that ICC No.21 for Rs.1000/- and No.22 for Rs.334-25 discounted at the branch and Shri Maniar has initialled the Bills Register in token of having verified the said instrument about their proper entry. However, the concerned witness viz. Shri Manseta and S.K. Amin have not been able to say beyond doubt that Shri H.C. Maniar has not forwarded these to despatch department. As usual, these instruments were placed in the tray kept for the purpose and the messenger had a free access who delivered it to the despatch department and there was no system of getting the acknowledgment of despatch department for having received the same. It was not duty of Shri Maniar to ensure that all instruments were delivered to the concerned departments in view of the practice for collecting instruments from the tray by the messenger obtaining at the branch. All the witnesses have simply described the procedure and none of these including Manager have stated that Shri Maniar was accountable for the lapse. There is no point or reason to destroy the instruments even belonging to M.M. Mankodi. The charge is not substantiated by the witnesses and Presenting Officer and hence requires to be vacated.

... ..."

Explanation is also given regarding charges 4 and 5, which is as under :-

" ... ...

As regards charge No.4 and 5 it will appear from the record of the branch and statement of the witness that Shri Maniar was in charge of Despatch Department and he has any direct connection regarding inter-changability of the instruments referred to in the charge-sheet. These documents were entered in the B.P. Register under the signature of Shri Maniar and have reached to the Despatch Department under prevailing practice. Subsequently how dak-meant for one borrowing bank reach another has not been clearly spelt out by any witness nor bank's record indicate that Maniar was responsible for mis-placement of the instruments in question. It is also difficult for the witnesses to say with certainty after four years and Bank has to rely

on availability of records only. There are no records to indicate that Maniar has ulterior motive in inter-changing the documents. The charge is therefore not proved and requires to be exonerated.

As regards charge No.5 relevant to misplacement of Registered Post dated 22-6-1979, the practice at the branch was to deliver articles by postal authority to official who are available. As per laid down instructions, Registered post must be received by the Manager, Sub-Manager and open by the despatch clerk in their presence and entered in the relative Inward Register. It will appear from the statement of Shri Badheka the then Manager that no specific officer at the branch was designated to receive Registered post and these functions were performed by whoever available. The presenting officer has failed to produce the relevant documents / evidence regarding receipt of these articles by Shri Maniar and hence the charge is not proved.

... ..."

Grievance was also made in the defence statement in connection with non-supply of certain documents.

7. The Enquiry Officer, thereafter, after considering the evidence produced on behalf of the Department, submitted findings in connection with the enquiry in question. The Enquiry Officer found that all the charges levelled against the petitioner are proved. The Enquiry Officer has also dealt with the point raised by the representative of the delinquent to the effect that the statement / report of one J.D. Shah should have been made available to the delinquent. The Enquiry Officer has clearly stated that the said J.D. Shah has not submitted any report. The Enquiry Officer also found that this will not affect the enquiry because in the enquiry, the witnesses are examined independently before the Enquiry Officer in connection with the charges levelled against the employee. In his concluding part of the report, the Enquiry Officer has stated as under :-

" ... ...

The Charge-sheeted employee has neither brought any witnesses nor produced any documents in his defence. I have carefully considered the

evidence of the witnesses, various exhibits and the arguments advanced on behalf of the Management and the delinquent. I have come to the conclusion that all the charges against the charge-sheeted employee are proved and he had thus abused his position as an officer handling bills / despatch etc. departments of the branch during his tenure as Assistant Accountant and thereby failed to discharge his duty with utmost integrity, honesty, devotion and diligence and acted in a manner which is unbecoming of an officer of the Bank. By these acts, he has contravened the Rule 50(4) and 60(2) of State Bank of Saurashtra (Officers') Regulations, 1979.

... ..."

The Enquiry Officer thereafter forwarded the said report along with the documents to the Disciplinary Authority.

8. The Disciplinary Authority, thereafter, after going through the report of the Enquiry Officer, decided to pass an order of compulsory retirement by way of punishment in connection with the charges proved against the petitioner. Since, as per Regulation 68(1)(ii), the approval of the Managing Director was necessary before imposing such penalty, the matter was sent to the Managing Director for his consideration. The Managing Director passed an order dated 28th March, 1985, by which he has accepted the findings of the Enquiry Officer after going through the relevant papers. The Managing Director has accordingly held that all the charges levelled against the petitioner be treated as proved and the punishment as proposed by the Disciplinary Authority be finally imposed on the petitioner.

In the said order of the Managing Director, it is also stated that, if so advised, the petitioner can prefer an appeal under Section 70 of the Regulations of the Bank. However, instead of preferring any statutory appeal, the petitioner has challenged the aforesaid decision of the disciplinary authority by way of the present Special Civil Application.

9. At the time of hearing of this petition, Mr.Mangukia, learned Advocate for the petitioner, pressed into service following points :-

(1) That it is a case of "No Evidence", and, therefore, the order of penalty is bad in law;

(2) The petitioner was not supplied with necessary documents and, therefore, the ultimate order is vitiated as the enquiry is conducted contrary to the principles of natural justice;

(3) The penalty is disproportionate to the gravity of charges proved against the petitioner;

A n d

(4) At the fag end of the arguments, a last point was also taken by Mr.Mangukia that before imposing penalty, the petitioner was not heard and the copy of the Enquiry Officer's report was submitted only with the punishment order and not prior to that and, therefore, since no hearing was given to the petitioner in connection with the proposed penalty, and since the enquiry officer's report was not given to him in advance before passing the penalty order, the order of penalty is bad in law.

10. Mr.Ajmera, who is appearing for the petitioner, on the other hand, submitted that the petitioner was given appropriate opportunity to defend his case. He further submitted that it cannot be said that it is a case of "No Evidence". According to him, on the contrary, it is a case of ample evidence. He submitted that the petitioner has not even led any evidence, oral or documentary, in any manner and so far as Charge No.1 is concerned, which is in connection with the withdrawal of the excess amount, in fact, he had admitted the said charge. He also submitted that in a departmental enquiry, even if there is some legal evidence, on which the findings can be based, the decision of the Disciplinary Authority, is not required to be disturbed by this Court in a petition filed under Article 226 of the Constitution of India. Mr.Ajmera further submitted that so far as penalty in question is concerned, the Bank has taken a more charitable view and instead of dismissing the petitioner from service, he is subjected to compulsory retirement. He submitted that when serious charges were levelled and, ultimately, the same were proved against the petitioner, it cannot be said that the penalty imposed by the Bank is disproportionate to the gravity of the charges levelled against the petitioner. Mr.Ajmera also further submitted that as per the Bank Regulations prevailing at the relevant time, the petitioner was required to be given finding of the Enquiry Officer's report, along with the final order and

there is no provision of giving hearing on the question of punishment after the enquiry is over.

I have heard both the counsel in detail. I have also gone through the report of the Enquiry Officer and necessary documents submitted along with the petition.

11. So far as the contention of Mr.Mangukia that it is a case of "No Evidence" is concerned, as pointed out earlier, the petitioner was subjected to five charges. So far as charge No.1 is concerned, it is in connection with withdrawal of certain amounts on three different occasions. The petitioner was serving at the relevant time at Jamnagar Branch of the Bank and the amount in question was withdrawn by him by withdrawal application in the said Branch and the account of the petitioner was at Bhavnagar Branch. It is not in dispute that the amount in question was withdrawn by the petitioner, even though, no sufficient balance was available at the relevant time in the said account of the petitioner at the Bhavnagar Branch. The Enquiry Officer, after going through the documentary evidence on record, and after considering the evidence of the witnesses examined on behalf of the Bank, has, ultimately, come to the conclusion that the charges levelled against the petitioner are proved.

12. In order to find out whether the report of the Enquiry Officer is based on some evidence or otherwise, it is necessary to refer to the finding of the Enquiry Officer in this behalf. It is also required to be noted that so far as the petitioner is concerned, he has not led any evidence worth the name, either oral or documentary, to substantiate his say that, in good faith, believing that there was sufficient balance available at his Bhavnagar Branch account, he has withdrawn the amount. At page 48, the Enquiry Officer observed as under :-

" ... ...

Further I would refer the statement of accounts maintained at Krishnanagar Branch (P.Ex.20) which shows that at no stage the funds were more than Rs.500/- during the period from 1.1.79 to 4.7.79 and does not indicate anything supporting the above arguments. Further I am not convinced with the argument of the delinquent in his letter dated 6.10.79 "I could not pay required attention and the things went unnoticed" particularly when he has encashed three withdrawals (not one) on

different dates without sufficient balance in his account.

Exhibit P.Ex.7 shows that the amount of I.C.C.'s credited to his account with Ranjit Road branch was withdrawn by him which indicates that the funds were utilised for his personal gain.

... ..."

Ultimately, the Enquiry Officer came to the conclusion that the said charge No.1 is proved against the petitioner.

It is also important to note that the petitioner himself had admitted that he had withdrawn certain amounts, even though no sufficient balance was lying to the credit of the account to cover the amount of aforesaid withdrawals. It is not in dispute that the documents regarding the two withdrawals, i.e. of Rs.1,000/- and Rs.750/-, discounted by the Branch on 5.2.1979 and 17.2.1979, respectively, were either misplaced or destroyed. It is argued by Mr.Mangukia that so far as the petitioner is concerned, it was not his duty to despatch the same and, ultimately, if they are lost or destroyed by some other Officers, the petitioner cannot be blamed for the same. For this purpose, the Enquiry Officer considered evidence of various witnesses. The Enquiry Officer has also discussed the evidence of various witnesses, which is at page 49 in the compilation and the same is extracted as under :-

" ... ...

While going through the proceedings of the enquiry the following points are evidence :

(A) Shri S.K. Amin, a witness has stated that he does not know whether the bills were sent to the despatch clerk.

(B) in cross examination Shri Amin has stated that the I.C.C.'s in question were handed over to the concerned officer as he was sitting adjacent to him.

(C) That as per normal practice, the bills after being initialled (in bills register) by the concerned office were sent to the despatch department.

(D) The concerned officer who initialled the bills of 6/2/79 and 17/2/79 in the bills register was Shri Maniar (P.E.X.1).

(E) That movement register as prescribed was not introduced.

(F) That as stated by Shri A.S. Dave during his deposition bills are initialled by the concerned officer in IBC register and then sent to despatch department and the peon was carrying the bills to despatch department from the tray lying on the table of the bills department officer.

(G) That Shri Mansate,-witness during his deposition has stated that he had not received the said ICC's for despatch.

(H) That Shri Badheka during his deposition has stated that the telegram received from the Krishnanagar branch shows that ICC No.21 and 29 do not appear to have been received by the branch.

The witness produced by the Presenting Officer have thus testified the following facts :-

That Shri Maniar was in charge of the bills department, the relative bills have reached to this table but have not reached to the despatch department. This gives reasonable ground to believe that Shri Maniar had with ulterior motive not forwarded the two withdrawals and either misplaced or destroyed the said instruments.

The Defence Representative has argued that the movement register was not maintained at the Branch but he has not tried to substantiate by witnesses or evidence whether number of instances for loss of instrument have taken place at the Branch due to lapse on the part of the Branch not introducing the movement register.

The chain of arguments by the Presenting Officer indicate that the instruments were missing from the desk of Shri Maniar who was in-charge of bills department. Regarding his duty, Shri Badheka a witness during his deposition has stated "when he took over charge, there was one duty list for staff members and this was initialled/signed individually. Shri Maniar so far I recollect had also signed the same."

I cannot accept the arguments of Defence Representative to prove defects in the procedure for exonerating the charge when the witnesses

produced by the Presenting Officer and the evidences on record testify that the instruments did not reach the despatch department from the table of Shri Maniar.

I, therefore, consider the charge No.2 as proved.

... ..."

Regarding charge No.3, which alleged that in order to create an impression that relative documents in respect of his withdrawal of Rs.1,000/- encashed by him on 6/2/1979 were not forwarded by him willingly, and he had also misplaced or destroyed the ICC-22 along with its documents in respect of Bank's other party discounted by the branch on the same day, the Enquiry Officer found that the said charge is proved.

Regarding destroying or misplacing the registered post cover containing the returning memo of withdrawal of the aforesaid amount of Rs.1,000/-, i.e. regarding charges 4 and 5, on appreciation of evidence, the Enquiry Officer found that the petitioner, with an ulterior motive, misplaced or destroyed registered post dated 22.6.1979 received from the postal authorities.

Considering the aforesaid aspect of the matter, ultimately, it has been recorded by the Enquiry Officer that the petitioner has failed to discharge his duty with utmost integrity, honesty, devotion and diligence and acted in a manner which is unbecoming of an Officer of the Bank, for which reference is made to Rule 50(4) and Rule 60(2) of the State Bank of Saurashtra (Officers') Regulations, 1979.

13. On appreciation of evidence on record, ultimately, the Enquiry Officer has recorded a finding of guilt against the petitioner. As stated earlier, so far as charge No.1 is concerned, the petitioner himself has admitted that he had withdrawn the amount, which was, ultimately, found to be in excess. It is also required to be noted that even though the petitioner was serving at Jamnagar, he was allowed to encash the amounts, i.e. Rs.1,000/- on 5.2.1979, Rs.750/- on 17.2.1979 and Rs.1,000/- on 5.6.1979, drawn on the joint savings bank account of the petitioner and his brothers, i.e. Account No.4542, which was kept at the Bhavnagar Branch of the petitioner, even though it was an admitted fact that there was no sufficient balance and during the five-month period, till the same was noticed, at no point of time,

the funds to the credit of the said account exceeded Rs.500/-. Accordingly, the petitioner had encashed withdrawal even though no sufficient balance was available in the bank account at Bhavnagar. Ultimately, it was found that there was no sufficient balance at any point of time. The fact is that the petitioner had retained the amount, which he had withdrawn, even though there was no sufficient balance in his account at Bhavnagar and the said withdrawal was concerned with the account, which was maintained by the petitioner at the Bhavnagar Branch. The Enquiry Officer has dealt with the evidence of the parties in great detail and has reached the said conclusion. Being an Accountant in the Bank, it was the duty of the petitioner to verify whether he was having sufficient balance in his account before effecting withdrawal. The effect of the same is that the petitioner retained the said amount and utilised the said amount for about five months. It may be true that there may not be any direct evidence so far as charges 2 to 5 are concerned, but it is required to be noted that the disciplinary authority was perfectly justified in drawing a reasonable inference to the effect that so far as missing of the register of documents at subsequent stage are concerned, the real beneficiary of the same is the petitioner, who might have played active role in that behalf. It is not possible to believe that the petitioner, before withdrawing the said amount, was not aware that there was no sufficient amount in his bank account before such withdrawal. Not only that, even subsequently, for a long period, at no point of time, the petitioner had tried to deposit the entire amount in the said bank and, there was a constant deficit of the amount in his said joint account. Under these circumstances, in my view, it cannot be said that it is a case of "No Evidence", especially when it is not in dispute that the petitioner had withdrawn the amount, even though there was no sufficient balance, which part he himself has admitted, but tried to justify the same with some lame excuses. It is a clear case where the petitioner has misused his position in the bank as an Accountant and has utilised the said amount for a fairly long period even though there was no sufficient balance in his bank account. Under the aforesaid circumstances, even the withdrawal of the amount on the part of the petitioner without there being sufficient balance in his bank account itself can be said to be an act unbecoming of a bank officer, and, in my view, ultimately, if the disciplinary authority has drawn a reasonable inference that the subsequent development of misplacing or destroying corresponding record can be attributed to the petitioner, looking to the facts and circumstances of the

case, and the preponderance of probabilities, it can be said that the disciplinary authority has reached a right conclusion. There is abundant material and evidence before the Enquiry Officer for bringing home the charges levelled against the petitioner, which is incorporated by the Enquiry Officer in his report, which is at pages 49 and 50, and which is already incorporated in the earlier part of this order. The petitioner has not examined himself and has not led any evidence to prove that there was sufficient balance at his Bhavnagar account at the relevant time or in the near future from the date of withdrawal of the amounts. As such, it is not in dispute that during subsequent five months, at no point of time, sufficient amount was lying to the credit of the said account of the petitioner at the Bhavnagar Branch. The effect of the same is that the petitioner had withdrawn the amount and even though, there was no sufficient balance available in his bank account, he has taken undue advantage of the position as a bank employee, as, ordinarily, no person can be allowed to withdraw any amount in excess than the amount lying to his credit in the bank account. Considering the enquiry officer's report and reasoning and considering the circumstances of the case, it cannot be said that it is a case of "No Evidence". Departmental proceedings are not to be equated with the proceedings before a court nor is it a criminal trial. "Benefit of doubt" is a foreign concept so far as departmental proceedings are concerned. Even if there is some evidence, the Court would not disturb such finding even if other view is possible from the same set of evidence. In The High Court of Judicature at Bombay v. Shashikant S. Patil, 1999(6) SCALE 673, the Apex Court has held as under :-

" ... ...

16. The Division Bench of the High Court seems to have approached the case as though it was an appeal against the order of the administrative/disciplinary authority of the High Court. Interference with the decision of departmental authorities can be permitted, while exercising jurisdiction under Article 226 of the Constitution if the authority had held proceedings in violation of the principles of natural justice or in violation of statutory regulations prescribing the mode of such inquiry or if the decision of the authority is vitiated by considerations extraneous to the evidence and merits of the case, or if the conclusion made by the authority, on the very face of it, is wholly

> arbitrary or capricious that no reasonable person could have arrived at such a conclusion, or ground very similar to the above. But we cannot overlook that the departmental authority ... is the sole judge of the facts, if the inquiry has been properly conducted. The settled legal position is that if there is some legal evidence on which the findings can be based, then adequacy or even reliability of that evidence is not a matter for canvassing before the High Court in a writ petition filed under Article 226 of the Constitution.
>
> ... ..."

In the instant case, in my view, evidence on record is sufficient for reaching the conclusion which is arrived at by the disciplinary authority. It is also required to be noted that while exercising powers under Article 226 of the Constitution, this Court is not sitting as an appellate court. This Court is not required to meticulously examine each and every piece of evidence and to undertake the exercise of re-appreciating the evidence. Under the circumstances, in my view, it cannot be said that it is a case of "No Evidence", or that the findings arrived at by the disciplinary authority is perverse in any manner. In that view of the matter, the first contention of Mr.Mangukia that it is a case of "No Evidence" or that the finding of the disciplinary authority is perverse, has no substance and hence, the same is rejected.

14. So far as the argument of Mr.Mangukia that necessary documents are not supplied, is concerned, the same is without any basis and foundation. Relevant documents and materials which are relevant for the purpose of deciding the issue are already on record and, as observed in the Enquiry Officer's report, regarding non-supply of the statement / report of Mr.J.D. Shah, and Mr.Badheka, the Enquiry Officer dealt with the same at page 53 in the compilation. Mr.Mangukia is not in a position to give any particulars about a particular document, which is not supplied or which has resulted in violation of the principles of natural justice. On the contrary, the petitioner himself has never even led any evidence, as stated earlier, in any manner. I, therefore, do not agree with the submission of Mr.Mangukia that the principles of natural justice are violated by the Bank in the instant case.

15. As regards the contention of Mr.Mangukia that the

Enquiry Officer's report is not submitted to the petitioner earlier and no hearing for the purpose of imposing penalty was afforded to the petitioner, Mr.Ajmera, learned Advocate for the respondent, has taken the Court through the Regulations framed by the Bank. No such provision, regarding giving hearing before passing final order of punishment, is contemplated under the Regulations. The Enquiry Officer's report was made available to the petitioner along with the final order of punishment and that is the only requirement under the Regulations. That was made available to the petitioner as the order of the disciplinary authority is appealable before the appellate authority of the Bank. It is a different thing that the petitioner has not chosen to approach the appellate authority by way of appeal. In this connection, reference is required to be made to the decision of the Apex Court in Managing Director, ECIL v. B. Karunakar, AIR 1994 SC 1074. In the instant case, the Apex Court has held as under :-

" ... ...

The law whether after the 42nd Constitution Amendment the delinquent was entitled to copy of Inquiry Officer's report was in an unsettled condition till 20th November, 1990 on which day Mohd. Ramzan Khan's case (AIR 1991 SC 471) was decided by the Supreme Court holding that the delinquent is entitled to copy of the report of the Inquiry Officer so as to enable him to make representation to the Disciplinary Authority against it. Since the said decision made the law expressly prospective in operation the law laid down there will apply only to those orders of punishment which are passed by the disciplinary authority after 20th November, 1990. This is so. notwithstanding the ultimate relief which was granted in Mohd. Ramzan Khan's case (AIR 1991 SC 471) which was per incuriam. No order of punishment passed before that date would be challengeable on the ground that there was a failure to furnish the inquiry report to the delinquent employee. The proceedings pending in courts / tribunals in respect of orders of punishment passed prior to 20th November, 1990 will have to be decided according to the law that prevailed prior to the said date and not according to the law laid down in Mohd. Ramzan Khan's case. This is so notwithstanding the view taken by the different Benches of the Central Administrative Tribunal or by the High Courts or by the Supreme Court in R.K. Vashist's case

(1993 Suppl. (1) SCC 431). In view of the unsettled position of the law on the subject, the authorities / managements all over the country had proceeded on the basis that there was no need to furnish a copy of the report of the Inquiry Officer to the delinquent employee, and innumerable employees have been punished without giving them the copies of the reports. In some of the cases, the orders of punishment have long since become final while other cases are pending in courts at different stages. In many of the cases, the misconduct has been grave and in others the denial on the part of the management to furnish the report would ultimately prove to be no more than a technical mistake. To reopen all the disciplinary proceedings now would result in grave prejudice to administration which will far outweigh the benefit to the employees concerned. Both administrative reality and public interests do not, therefore, require that the orders of punishment passed prior to the decision in Mohd. Ramzan Khan's case without furnishing the report of the Inquiry Officer should be disturbed and the disciplinary proceedings which gave rise to the said orders should be reopened on that account.

... ..."

At the relevant time, as per the Regulations of the Bank, the enquiry was initiated and, ultimately, punishment order was passed against the petitioner on 28.3.1985. The decision of the Disciplinary Authority is prior in time, and in view of the judgment referred to above, since the decision taken by the disciplinary authority is earlier to the decision of the Apex Court in Ramzan Khan's case reported in AIR 1991 SC 471, when the decision was taken as per the Rules and Regulations of the Bank, it cannot be said that the action of the Bank in not giving hearing in connection with the proposed penalty in any way vitiates the final decision of the Bank. The said contention of Mr.Mangukia is, therefore, rejected.

16. So far as the contention to the effect that the penalty is disproportionate to the gravity of the charges proved against the petitioner is concerned, in my view, there is no substance in the said contention. The petitioner was serving as a Class I Bank Officer. He took undue advantage of encashing certain amounts, even though there was no sufficient bank balance available in his joint bank account, at Bhavnagar. He was serving at

Jamnagar and he had encashed amount on three different dates and, ultimately, it was found that for a considerable time, he kept the said amount with him without keeping appropriate balance in the corresponding bank account, which was subjected to such withdrawal at Bhavnagar. Petitioner has never tried to follow up the matter to find out whether the amount which he had withdrawn is deducted from his corresponding bank account and whether there was enough fund available at that Branch. Simply because the account is a joint bank account, the petitioner cannot be exonerated from the aforesaid act of commission, which is culpable in nature, as he has withdrawn the amount and, thereafter, he had never tried to take follow up action to find out whether the bank account was having sufficient balance, for a considerable period. The petitioner, who was serving at a banking institution, was required to be vigilant, honest and more careful and it seems that he has taken undue advantage of his position as an Accountant in the Bank by encashing the amount without there being any sufficient bank balance to his credit in the account. Regulation 50(4) of the Regulations provides as under :-

" ... ...

50. xxx xxx xxx

(4) Every Officer shall, at all times, take all possible steps to ensure and protect the interests of the Bank and discharge his duties with utmost integrity, honesty, devotion and diligence and do nothing which is unbecoming of a bank official.

... ..."

Regulation 60(2) provides as under :-

" ... ...

60. xxx xxx xxx

(2) No officer shall discount or negotiate or cause to be discounted or negotiated cheques or other instruments drawn on his account without sufficient balance therein.

... ..."

In the instant case, it is not in dispute that after encashing the amount, for a considerable period of

about five months, the petitioner never bothered to find out whether there was sufficient balance available in his bank account at Bhavnagar. As such, it was found that at no point of time, the amount which was withdrawn by the petitioner was ever deposited and always, the account at Bhavnagar was in deficit, as compared to the amount, which is withdrawn by the petitioner. It is not possible to believe that for five months, the petitioner will not even bother to enquire in connection with the sufficiency of the funds at his Bhavnagar account, and, in the meanwhile, necessary documents were also misplaced or misplaced, as has been found by the Enquiry Officer. Looking to the seriousness of the charge, in my view, the Bank has taken a lenient view by not imposing maximum penalty of dismissal as various penalties are prescribed under the head of "Major Penalties", such as, reduction to a lower grade or post, or to a lower stage in a time scale, compulsory retirement, removal from service, dismissal, etc. In fact, instead of imposing the penalty of removal from service or dismissal, the respondent has passed an order of compulsory retirement, so that the petitioner may not be disqualified in getting employment, elsewhere. Considering the aforesaid aspect of the matter, in my view, it cannot be said that the penalty of compulsory retirement is disproportionate to the gravity of the charges levelled and proved against the petitioner.

17. At this stage, one last argument of Mr.Mangukia is required to be considered. It was argued by him that, if the petitioner had really withdrawn the amount with such dishonest motive, the petitioner would not have withdrawn such a small amount of Rs.1,000/- or Rs.750/-, as, he would have withdrawn larger amount, if the intention was bad. It is, however, required to be noted that, at the relevant time, when the withdrawal was effected by the petitioner, the balance at the Bhavnagar Branch was only Rs.13.52 Ps., and, at no point of time, appropriate balance of more than Rs.500/- was even subsequently found in the said bank account. In any case, such hypothetical argument or presumptions cannot be considered to find out the guilt or otherwise of the petitioner.

18. Considering the aforesaid aspect of the matter, it cannot be said that the charges proved against the petitioner are based on "No Evidence", or without there being any appropriate material on record. Equally, it also cannot be said that the penalty imposed on the petitioner is in any way disproportionate to the gravity of the charges levelled against the petitioner. As

stated earlier, the petitioner has not even tried to lead any independent evidence by examining himself or his brothers, with whom he was having joint account at Bhavnagar, to find out that in view of a bona fide mistake, the amount was withdrawn. Even the petitioner has not led any evidence and Mr.Mangukia has also submitted that there is no evidence to the effect that even prior to the withdrawal of the amount, the aforesaid amount was lying to the credit of the bank account at Bhavnagar or that such amount was available immediately after such withdrawal. On the contrary, the evidence shows otherwise so far as the said aspect is concerned. After appropriate departmental enquiry, the charges are proved against the petitioner and penalty is imposed on the petitioner, and, therefore, this is not a case in which any interference of this Court is called for in exercise of the extraordinary jurisdiction of this Court under Article 226 of the Constitution of India. It cannot be said that there is any violation of the principles of natural justice in conducting the said enquiry by the disciplinary authority. I, therefore, do not find any substance in this petition and, the same is dismissed. Rule is discharged. No costs.

19. It is, however, observed that in case the petitioner is entitled to any retiral dues, like gratuity or any other dues, in spite of the penalty of compulsory retirement, the Bank may give such benefit in case the petitioner is entitled to any such dues as per the Regulations of the Bank. If the petitioner is entitled to any such amount in spite of the penalty in question, the Bank may pay the same as per Regulations, expeditiously, and preferably, within a period of two months from today. It is, however, clarified that this direction is subject to the Rules and Regulations of the Bank and only if the petitioner is otherwise entitled to get any such benefit in spite of the order of penalty of compulsory retirement.

12th November, 2003 (P.B. Majmudar, J.)

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(apj)